

**Illinois Department of Revenue
Regulations**

Title 86 Part 120 Section 120.20 Legal and Technical Interpretations

**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 120
REAL ESTATE TRANSFER TAX**

Section 120.20 Legal and Technical Interpretations

- a) Taxable Transactions.
 - 1) Transfers of title to real estate located in Illinois are subject to the provisions of the Real Estate Transfer Tax Law [35 ILCS 200/Art. 31](Law).
 - 2) Transfers of a beneficial interest in real property located in Illinois are subject to the provisions of the Law, including:
 - A) the beneficial interest in an Illinois land trust;
 - B) the lessee interest in a ground lease (including any interest of the lessee in the related improvements) that provides for a term of 30 or more years when all options to renew or extend are included, whether or not any portion of the term has expired;
 - C) the indirect interest in real property as reflected by a controlling interest in a real estate entity:
 - i) **EXAMPLE 1:** Shareholder A and Shareholder B together own all 100 shares of the outstanding stock of Corporation X. Shareholder A owns 90 shares and Shareholder B owns 10 shares. Corporation X owns 60 percent of the stock of Corporation Y. Corporation Y's sole asset is real property in Illinois. Shareholder A transfers all of the stock in Corporation X to Shareholder B. There has been a transfer of a controlling interest in a real estate entity (e.g., the 90 percent interest in Corporation X multiplied by the 60 percent interest in Corporation Y equals the 54 percent interest Shareholder A had in Corporation Y);
 - ii) **EXAMPLE 2:** Shareholder A and Shareholder B together own all 100 shares of the outstanding stock of Corporation X. Shareholder A owns 90 shares and Shareholder B owns 10 shares. Corporation X owns 50 percent of the stock of Corporation Y. Corporation Y's sole asset is real property in Illinois. Shareholder A transfers all of the stock in Corporation X to Shareholder B. There has not been a

transfer of a controlling interest in a real estate entity (e.g., the 90 percent interest in Corporation X multiplied by the 50 percent interest in Corporation Y equals the 45 percent interest Shareholder A had in Corporation Y); and

- D) any other type of interest with the right to use or occupy real property, or the right to receive income from real property such as air rights, air space rights, cooperative housing rights, condominium rights, development rights, easements, mining rights, royalty interests, timber rights, and timeshare rights.
- 3) All such transfers are presumed taxable unless the person liable for the payment of the tax qualifies for an exemption and makes such a notation on the transferring document filed with the county.
- b) Full Actual Consideration.
- 1) The full actual consideration for a transfer or aggregated transfers shall be stated in the transfer declaration. It is the total sale price or amount actually paid (or required to be paid) for the real estate or beneficial interest in real property, whether paid in money or otherwise, including personal property, real property, services, or other item of value.
 - 2) Full actual consideration includes:
 - A) the amount of any indebtedness or other obligation (such as liens or judgments) that is cancelled, discharged, or otherwise released in connection with the transfer;
 - B) the amount of any mortgages, regardless of whether the underlying indebtedness is assumed or taken subject to by the transferee; and
 - C) the amount of any back real estate taxes or other taxes paid by the transferee.
 - 3) Full actual consideration does not include any amount credited against the sale price or refunded for improvements or repairs.
- c) Tax.
- 1) Although the full actual consideration is stated in the transfer declaration, the tax is based on the net consideration after allowed deductions.
 - 2) Deductions will be allowed for the following amounts only if substantiated in the transferring document or other supplemental information submitted by the parties:
 - A) the amount of personal property transferred to the transferee;
 - B) the amount of other real estate transferred to the transferor in an actual (simultaneous) exchange between the same parties;

- C) the amount of any mortgage remaining outstanding at the time of transfer unless the parties delay its discharge with the intent to avoid or underpay this tax;
 - D) the amount of corporate franchise tax actually paid under the Business Corporation Act of 1983 as a result of a transfer of a controlling interest in a real estate entity; and
 - E) the amount of State transfer taxes paid for any prior transfer of an aggregated interest for a controlling interest transfer under subsection (d)(4).
 - 3) Allowed deductions will not be included when computing the value of Revenue Stamps to be sold or affixed to the transferring document:
 - A) EXAMPLE 1: Party A sells real estate to Party B for \$100,000. Included in the sale from Party A to Party B are various items of personal property valued at \$5,000. The transfer declaration should report \$100,000 as the full actual consideration for this transfer, but the value of the personal property should be taken as a deduction resulting in a net consideration of \$95,000 for computing the tax.
 - B) EXAMPLE 2: Party A pledges real estate as security for a \$25,000 mortgage loan. Party A pays back \$10,000 on the principle and then transfers title to Party B. Party B pays \$15,000 to Party A and assumes responsibility for completing the remaining mortgage payments. The transfer declaration should report \$30,000 as the full actual consideration for this transfer, but the \$15,000 outstanding balance of the mortgage should be taken as a deduction resulting in a net consideration of \$15,000 for computing the tax.
 - C) EXAMPLE 3: Party A pledges real estate as security for a mortgage loan. Party A transfers title to Party B and waits one week before paying off the mortgage so as to avoid payment of the tax. This debt is not an outstanding mortgage and should not be taken as a deduction in computing the tax.
 - 4) Additional tax shall be due at the time any subsequent payment is made if part of the full actual consideration for a transfer of a controlling interest in a real estate entity is contingent upon the occurrence of a future event or the attainment of a future level of financial performance.
- d) Aggregation of Related Transfers.
- 1) Unless made pursuant to contracts executed prior to June 1, 2004, related transfers will be aggregated for the purpose of determining whether there has been a transfer of a controlling interest in a real estate entity.
 - 2) Related transfers include:

- A) multiple transfers of interests in the same real estate entity that occur within a rolling 24-month period by the same transferor. EXAMPLE: Shareholder A owns 100 percent of Corporation X. Its sole asset is real property in Illinois. Shareholder A transfers a 40 percent interest to Party B and a 20 percent interest to Party C within the same year;
 - B) multiple transfers of interests in the same real estate entity that occur within a rolling 24-month period by different transferors who act in concert as a result of common ownership. EXAMPLE: A parent corporation and a wholly-owned subsidiary that is acting under the direction of the parent each transfer on the same day a 30% interest in another entity that owns real estate located in Illinois. The two corporations have acted in concert because the parent controls the actions of the subsidiary as a result of common ownership; and
 - C) multiple transfers of interests in the same real estate entity that occur within a rolling 24-month period by different transferors who act in concert as a result of a common purpose in structuring and executing the transfers, including instances when sales agreements contain mutual terms or other agreements bind the transferors to a particular course of action with respect to the transfer. EXAMPLE: Partnership X is composed of Partners A and B. Each has a 50 percent partnership interest. Partnership X owns real estate located in Illinois. In July of 2004, Partner A and Partner B together decide to raise more capital by selling a percentage of their respective partnership interests. In October 2004, Partner A and Partner B each transfer a 15 percent partnership interest to Party C. In January 2005, Partner A and Partner B each transfer a 20 percent partnership interest to Party D. The partners have acted in concert because there is a common purpose for the transfers.
- 3) The full actual consideration for each of the related transfers will also be aggregated on the transfer declaration in determining the proportional tax liability of any transferor in a controlling interest transfer:
- A) EXAMPLE 1: Shareholder A will owe tax on the full actual consideration for the aggregated transfer of the 60 percent interest in the first of the immediately preceding examples.
 - B) EXAMPLE 2: The parent corporation and the wholly-owned subsidiary will each owe tax on the full actual consideration for the aggregated transfer of their respective 30 percent interests in the second of the immediately preceding examples.
 - C) EXAMPLE 3: Partner A and Partner B will each owe tax on the full actual consideration for the aggregated transfer of their respective 15 percent and 20 percent interests in the third of the immediately preceding examples.
- 4) The tax is due if there is a subsequent transfer of an additional interest after the tax has already been paid on a controlling interest transfer. EXAMPLE: If an additional

10 percent interest is subsequently transferred in Example 1, then Shareholder A will owe tax on the full actual consideration for only the subsequent transfer of a 10 percent interest.

e) Exemptions.

- 1) A controlling interest transfer that is accomplished by a transferring document other than a deed or trust document does not qualify for any of the exemptions under 35 ILCS 200/31-45.
- 2) A transfer that is accomplished by a deed or trust document made by, from, or between the United State of America, the State of Illinois, or any of their respective agencies, instrumentalities, or political subdivisions qualifies for the exemption under 35 ILCS 200/31-45(b).
- 3) A transfer that is accomplished by a deed or trust document made by a foreign government that is a treaty participant to the Vienna Convention on Consular Relations qualifies for the exemption under 35 ILCS 200/31-45(b).
- 4) An entity is considered a governmental body so as to qualify for the exemption under 35 ILCS 200/31-45(b) if it was created to carry out a public function by a federal, state, or local unit of government.
- 5) A sheriff's deed does not qualify for the governmental exemption under 35 ILCS 200/31-45(b) unless the underlying transfer relates to property or interests acquired by or from any governmental body, or property or interests transferred between governmental bodies.
- 6) An organization is organized and operated exclusively for charitable, religious or educational purposes so as to qualify for the exemption under 35 ILCS 200/31-45(b) if such a determination has previously been made by the Department of Revenue (as evidenced by the issuance of a sales tax exemption letter or a property tax exemption certificate) or by a court of competent jurisdiction.
- 7) A transfer that is accomplished by a deed or trust document as a gift qualifies for the exemption under 35 ILCS 200/31-45(e).
- 8) A transfer that is accomplished by a deed or trust document so as to effect a change of identity or form of organization or ownership does not qualify for the exemption under 35 ILCS 200/31-45(e) if the full actual consideration for the transfer amounts to \$100 or more. EXAMPLE: Party A transfers real estate valued at \$100,000 to a partnership in exchange for a 30% interest in the partnership's assets. The partnership's assets are valued at \$300,000 after this transfer. The full actual consideration for the transfer, Party A's \$90,000 partnership interest, exceeds the \$100 threshold so it does not qualify for the exemption under 35 ILCS 200/31-45(e).
- 9) A transfer that is accomplished by a deed or trust document does not qualify for the exemption under 35 ILCS 200/31-45(g) unless the transfer previously qualified for the exemption under 35 ILCS 200/31-45(c).

- 10) A transfer that is accomplished by a deed or trust document made by a parent corporation to a subsidiary corporation does not qualify for the exemption under 35 ILCS 200/31-45(j).
- 11) A transfer that is accomplished by an actual (simultaneous) exchange of deeds or trust documents between the same parties qualifies for the exemption under 35 ILCS 200/31-45(k). EXAMPLE: Party A and Party B each transfer title to real estate to the other party in a simultaneous exchange on the same date. Party A's real estate is valued at \$50,000. Party B's real estate is valued at \$55,000. The transfer is exempt from the tax except for the money difference or money's worth paid from one party to the other under 35 ILCS 200/31-45(k). The transfer declaration for the transfer from Party A to Party B should report \$50,000 as the full actual consideration for the transfer, but the value of Party B's property should be taken as a deduction resulting in a net consideration of \$0 in computing the tax. Party A must add an exemption notation on the transferring document that is filed with the county. The transfer declaration for the transfer from Party B to Party A should report \$55,000 as the full actual consideration for the transfer, but the value of Party A's property should be taken as a deduction resulting in a net consideration of \$5,000 in computing the tax. Party B must add an exemption notation and affix the appropriate amount of Revenue Stamps on the transferring document that is filed with the county.
- 12) A deferred exchange that is accomplished by a deed or trust document does not qualify for the exemption under 35 ILCS 200/31-45(k). EXAMPLE: Party A and Party B each transfer title to real estate to the other party in a deferred exchange on different dates. Party A's real estate is valued at \$50,000. Party B's real estate is valued at \$55,000. The transfer declaration for the transfer from Party A to Party B should report \$50,000 as the full actual consideration for the transfer. The transfer declaration for the transfer from Party B to Party A should report \$55,000 as the full actual consideration for the transfer. No deduction should be taken in computing the tax on either transfer declaration because deferred exchanges do not qualify for the exemption under 35 ILCS 200/31-45(k).
- 13) A deferred ("Starker") exchange that is accomplished by a deed or trust document does not qualify for the exemption under 35 ILCS 200/31-45(k) even if it is exempt for federal tax purposes under Section 1031 of the Internal Revenue Code (26 USC 1031). EXAMPLE: Party A transfers title to real estate valued at \$50,000 to Party B. Party B does not transfer any real estate to Party A in the transaction. The transfer declaration for the transfer from Party A to Party B should report \$50,000 as the full actual consideration for the transfer. Party C subsequently transfers title to real estate valued at \$75,000 to Party A. The transfer declaration for the transfer from Party C to Party A should report \$75,000 as the full actual consideration for the transfer. No deduction should be taken in computing the tax on either transfer declaration because property is not being simultaneously exchanged in either transaction so as to qualify for the exemption under 35 ILCS 200/31-45(k).
- 14) A sheriff's deed does not qualify for the exemption under 35 ILCS 200/31-45(l) unless it appears on the face of the deed that the grantee is the holder of a

mortgage or an assignee pursuant to either a mortgage foreclosure proceeding or a transfer in lieu of foreclosure.

- 15) A real estate entity must be liable and have actually paid corporate franchise taxes under the Business Corporation Act of 1983 as a result of a controlling interest transfer in order to claim the exemption under 35 ILCS 200/31-46.

f) Forms.

Instructions covering forms issued pursuant to this Part and not in contravention of this Part, are incorporated herein and shall have the same force and effect as this Part.

(Source: Amended at 28 Ill. Reg. _____, effective _____)